FIMBank Plc v The Owners and/or Demise Charterer Ship or Vessel now known as 'Bao Lai'

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(i)-31–04 OF 2023(W)
NALLINI PATHMANATHAN, MARY LIM AND RHODZARIAH BUJANG FCJJ
16 OCTOBER 2023

Civil Procedure — Admiralty in rem — Writ — Whether validity of writ in rem in admiralty action could be extended for more than the five times stipulated in O 6 r 7(2) of the Rules of Court 2012 ('the ROC') if justice of case required it — Whether the five renewals specified in O 6 r 7(2) was only intended to strictly apply to indolent plaintiffs who failed to take steps to serve the writ even though defendant vessel was within jurisdiction — Whether plaintiff could not be blamed for non-service of writ if vessel never entered Malaysian waters — Whether in such cases court should exercise its inherent jurisdiction under O 92 r 4 of the ROC to extend validity of the writ until such time vessel came within jurisdiction

The instant appeal resulted from the decisions of the courts below to refuse to allow the validity of a writ in an admiralty action in rem to be renewed for a sixth time to enable it to be served on the respondent vessel. The courts below held that the clear words in O 6 r 7(2) of the Rules of Court 2012 ('the ROC') prevented them from renewing the writ for a sixth time even under the inherent jurisdiction of the court under O 92 r 4 of the ROC because no lacuna existed under O 6 r 7(2) of the ROC for the inherent powers to be exercised. The appellant had taken out the writ in rem, issued by the High Court at Kuala Lumpur, to prosecute a claim against the owners of the respondent vessel for loss and damage suffered as a result of certain cargo onboard the vessel having been allegedly delivered to unauthorised third parties who had not presented the original bills of lading. Since a writ in rem in an admiralty action differed from other ordinary writs in that it had to be served personally on the vessel concerned when it was within the jurisdiction and could not be served either out of jurisdiction or by way of substituted service, the appellant had successfully applied for five extensions of the validity of the writ on the ground that the vessel had never come into Malaysian waters to enable service to be effected. In urging the High Court to exercise its inherent jurisdiction to extend the validity of the writ for a sixth time, the appellant submitted that it was not at fault for the failure to serve the writ and that if its application was refused, it would suffer grave injustice because limitation on its cause of action against the respondent vessel had set in and coupled with the fact that the ownership of the vessel had changed hands three times, it was impossible for the appellant to take out a fresh writ against the respondent for the same cause

of action. In refusing to grant the sixth extension to the writ, the High Court held that it could not usurp the powers and functions of the Rules Committee which thought it fit to stipulate a maximum number of five renewals of the writ in O 6 r 7(2) of the ROC. The court also held that the validity of the writ could not be extended from time to time on an indefinite basis until such time the respondent vessel came into Malaysian waters as that would render O 6 r 7(2) of the ROC meaningless. The Court of Appeal dismissed the appellant's appeal and affirmed the High Court's decision. The Federal Court granted the appellant leave to appeal to it on the following questions of law: (a) whether O 6 r 7(2) of the ROC fixed an absolute limit on the number of times the validity of an admiralty writ in rem could be extended; (b) whether the language in O 6 r 7(2) precluded the court from exercising its inherent jurisdiction to extend the validity of the writ even if the court was of the view that the justice of the case warranted it; (c) whether O 6 r 7(2) applied in circumstances where personal service of the writ was an impossibility; and (d) whether O 6 r 7(2) was intended to abrogate or defeat a claimant's accrued statutory right to prosecute its claim in rem and to obtain security for its claim.

Held, unanimously answering the leave questions in the negative and allowing the appeal:

(1) The purpose and object of O 6 r 7(2) of the ROC was to stop a plaintiff from sleeping on a writ without making any effort to serve the same. It was in such a circumstance that the cap on the number of renewals of an admiralty writ in rem under O 6 r 7(2) was intended to operate (see para 20).

(2) Order 70 of the ROC (which dealt with admiralty matters) envisaged that an admiralty writ in rem could only be served on the defendant vessel when it was within Malaysian territorial waters. Unlike ordinary civil writs, an admiralty writ in rem could not be served out of jurisdiction or by way of substituted service. Therefore, if the vessel did not enter the jurisdiction, service of the writ simply could not be effected. In such a circumstance, O 6 r 7(2) of the ROC could not be logically read to impose a five-time renewal limit for the writ (see paras 23 & 26).

(3) Crucially, O 6 r 7(2) contained a proviso that efforts to serve the writ on a defendant had been unsuccessful. But if the defendant vessel never entered Malaysian waters, there was no opportunity for such 'efforts' to be made (see para 24).

(4) The rationale of O 6 r 7(2) of the ROC in the context of admiralty claims was to guard against indolent litigants who failed to take serious steps to serve a writ in rem on a defendant vessel that was within the jurisdiction. The provision did not cater for, and was therefore not applicable to, situations where it was impossible for a plaintiff to effect service of the writ because the defendant vessel never came into the jurisdiction. Such

an interpretation of O 6 r 7(2) of the ROC was in line with the laws of other leading maritime jurisdictions such as Singapore, England, Hong Kong and Australia, where there was no limit on the number of times the validity of an admiralty writ in rem could be extended. The courts in those jurisdictions recognised that the absence of the defendant vessel from the jurisdiction was a good reason to allow the writ in rem to be renewed regularly until the defendant vessel came within the jurisdiction, thereby affording the plaintiff the opportunity to serve the writ (see paras 25, 27–28 & 32).

(5) Reading O 6 r 7(2) of the ROC in a manner which placed an absolute limit on the number of times a writ in rem might be renewed, as the courts below had done, diverged from the purpose of the ROC — which was intended to facilitate the administration of justice, not incapacitate it — and punished a diligent litigant such as the appellant. The appellant had not slept on the writ nor had it forsaken any steps to effect service of the same. On the contrary, it had diligently monitored the movements of the vessel throughout the validity period of the writ. The appellant could not be faulted for non-service if the vessel never came into Malaysian waters. The changes in ownership of the vessel after the writ's issuance were similarly beyond the appellant's control. Manifest injustice would result to the appellant if its statutory right to prosecute its claim in rem and to obtain security for its claim were defeated by reason of a pedantic reading of O 6 r 7(2) (see paras 39–40).

(6) The exercise of the court's inherent powers could not be confined only to situations where there was a lacuna in the ROC. The fact that O 6 r 7(2) of the ROC expressly limited to five the number of times the validity of an admiralty writ in rem could be extended could not preclude the court from exercising its inherent power to extend the writ's validity beyond the fifth time to prevent injustice to a litigant (see paras 42 & 49).

(7) In holding that the express wording of O 6 r 7(2) of the ROC denied them of the power to renew a writ in rem for the sixth time, the courts below ignored the practical difficulties faced by plaintiffs in effecting service of the writ where the defendant vessel never came into the jurisdiction. It also potentially incentivised vessel owners to evade liability by keeping their vessels out of the jurisdiction until the limitation period for the claim had expired. The discretion lay with the courts to decide whether the writ should be renewed beyond the number of times specified in O 6 r 7(2) in the interests of justice. The Rules Committee ought to consider amending O 6 r 7(2) to remove the five-time limitation as that would not only prevent incidences of injustice, such as had happened in the instant appeal, from happening but would also be in keeping with the laws of other major maritime jurisdictions (see paras 49–51).

[Bahasa Malaysia summary

Rayuan ini adalah untuk keputusan mahkamah di bawah yang menolak satu tindakan admiralti iaitu *writ in rem* untuk dilanjutkan untuk kali keenam untuk tujuan penyerahan kepada kapal responden. Mahkamah di bawah memutuskan bahawa peruntukan yang jelas dalam A 6 k 7(2) Kaedah-Kaedah Mahkamah 2012 ('KKM') menghalang mereka daripada memperbaharui writ untuk kali keenam walaupun ianya di bawah bidang kuasa mahkamah di bawah A 92 k 4 KKM kerana tiada lacuna di bawah A 6 k 7(2) KKM untuk penggunaan kuasa sedia ada mahkamah. Perayu telah mengeluarkan *writ in rem*, yang dikeluarkan oleh Mahkamah Tinggi di Kuala Lumpur, untuk tuntutan terhadap pemilik kapal responden bagi kerugian akibat kerosakan yang berpunca dari kargo di dalam kapal itu yang dikatakan dihantar kepada pihak ketiga yang tidak mengemukakan bil muatan yang asal. Oleh kerana *writ in rem* di dalam tindakan admiralti berbeza daripada writ biasa yang lain kerana ianya perlu disampaikan secara kendiri ke atas kapal berkenaan dan di dalam kawasan bidangkuasa dan ianya tidak boleh diserahkan di luar bidang kuasa atau melalui serahan gantian, perayu telah berjaya memohon lima pelanjutan tempoh sah writ itu atas alasan kapal itu tidak pernah masuk ke perairan Malaysia bagi membolehkan serahan writ tersebut. Ketika memohon Mahkamah Tinggi melaksanakan bidang kuasanya untuk melanjutkan tempoh sah writ itu untuk kali keenam, perayu menghujahkan bahawa mereka tidak bersalah atas kegagalan serahan writ itu dan jika permohonannya ditolak, ianya akan menyebabkan ketidakadilan yang serius kerana kausa tindakannya terhadap kapal responden adalah terbatas dan pemilikan kapal itu juga bertukar sebanyak tiga kali. Oleh itu, adalah mustahil bagi perayu untuk mengeluarkan writ baharu terhadap responden. Ketika permohonan lanjutan tempoh writ untuk kali keenam writ itu ditolak, Mahkamah Tinggi memutuskan bahawa mahkamah tidak boleh melangkau kuasa dan fungsi Jawatankuasa Peraturan yang menetapkan bilangan maksimum adalah lima kali lanjutan tempoh writ menurut A 6 k 7(2) KKM. Mahkamah juga memutuskan bahawa tempoh writ itu tidak boleh dilanjutkan sekiranya tiada had masa yang muktamad bila responden masuk ke perairan Malaysia kerana ianya akan menyalahi peruntukan A 6 k 7(2) KKM. Mahkamah Rayuan menolak rayuan perayu dan mengesahkan keputusan Mahkamah Tinggi. Mahkamah Persekutuan memberikan kebenaran kepada perayu untuk merayu mengenai persoalan undang-undang berikut: (a) sama ada A 6 k 7(2) KKM menetapkan had muktamad untuk bilangan writ admiralti in rem boleh dilanjutkan; (b) sama ada peruntukan di dalam A 6 k 7(2) menghalang mahkamah dari menjalankan bidang kuasa sedia ada untuk melanjutkan tempoh writ itu walaupun mahkamah berpendapat ianya perlu demi keadilan kes; (c) sama ada A 6 k 7(2) terpakai dalam keadaan di mana penyerahan writ itu secara kendiri adalah mustahil; dan (d) sama ada A 6 k 7(2) bertujuan menghalang hak penuntut yang dijamin di dalam statut untuk melaksanakan

A tuntutannya secara in rem dan untuk membolehkan tuntutannya dapat dibuat.

Diputuskan, menjawab soalan-soalan kebenaran merayu dengan negatif dan membenarkan rayuan ini:

B

(1) Tujuan A 6 k 7(2) KKM adalah untuk menghalang plaintif dari 'tidur' ke atas writnya tanpa membuat sebarang usaha untuk menyerahkan writ tersebut. Oleh yang demikian, terdapat had writ admiralti in rem tersebut boleh diperbaharui seperti yang diniatkan ketika penggubalan A 6 k 7(2) KKM (lihat perenggan 20).

C

(2) Aturan 70 KKM (mengenai hal-hal admiralti) memperuntukkan bahawa writ admiralti in rem hanya boleh diserahkan ke atas kapal defendan ketika berada di perairan wilayah Malaysia. Tidak seperti writ sivil biasa, writ admiralti in rem tidak boleh diserahkan di luar bidang kuasa atau melalui penyerahan gantian. Oleh itu, sekiranya kapal itu tidak memasuki kawasan di dalam bidang kuasa, penyerahan writ tidak dapat dilaksanakan. Dalam keadaan sedemikian, A 6 k 7(2) KKM tidak dapat ditafsirkan secara logik bahawa writ hanya boleh diperbaharui sebanyak lima kali (lihat perenggan 23 & 26).

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(3) Adalah penting untuk diingati bahawa A 6 k 7(2) KKM mempunyai peruntukan yang menyentuh mengenai usaha tindakan untuk menyerahkan writ kepada defendan yang tidak berjaya. Namun sekiranya defendan tidak memasuki perairan Malaysia, maka tiada peluang untuk 'usaha' berkenaaan dipenuhi (lihat perenggan 24).

F

(4) Tujuan A 6 k 7(2) KKM di dalam konteks tuntutan admiralti adalah untuk menghalang litigan tidak mengambil langkah serius untuk menyerahkan writ in rem ke atas kapal defendan yang berada dalam bidang kuasa. Peruntukan itu tidak tidak terpakai kepada situasi di mana adalah mustahil bagi plaintif untuk melaksanakan penyerahan writ itu kerana kapal defendan tidak pernah masuk ke dalam kawasan bidang kuasa. Tafsiran A 6 k 7(2) KKM adalah selaras dengan undang-undang bidang kuasa maritim terkemuka lain seperti di Singapura, England, Hong Kong dan Australia, di mana tiada had pada bilangan tempoh writ admiralti in rem boleh dilanjutkan. Mahkamah dalam bidang kuasa tersebut mengakui bahawa ketiadaan kapal defendan di dalam bidang kuasa adalah alasan yang baik untuk membolehkan writ in rem diperbaharui sehingga kapal defendan berada dalam kawasan bidang kuasa, dengan itu memberi peluang kepada plaintif untuk menyerahkan writ itu (lihat perenggan 25, 27–28 & 32).

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(5) Menafsirkan A 6 k 7(2) KKM dengan meletakkan had muktamad pada bilangan writ in rem boleh diperbaharui, seperti yang telah dilakukan oleh mahkamah di bawah, menyimpang dari tujuan asal KKM — yang

bertujuan untuk memudahkan pentadbiran keadilan, bukannya menghalangnya — dan menghukum litigan yang berusaha sehabis baik seperti perayu. Perayu tidak 'tidur' di atas writ itu dan tidak mengabaikan sebarang langkah untuk menyerahkannya. Sebaliknya, dia telah bersungguh-sungguh memantau pergerakan kapal sepanjang tempoh sah writ tersebut. Perayu tidak boleh dipersalahkan kerana tidak menyerahkan writ itu sekiranya kapal itu tidak pernah masuk ke perairan Malaysia. Pertukaran pemilikan kapal selepas writ itu dikeluarkan juga di luar kawalan perayu. Tafsiran yang terlalu teliti terhadap A 6 k 7(2) akan menyebabkan hak statutori perayu untuk membuat tuntutan in rem tidak dapat dibuat dan akan menyebabkan ketidakadilan yang nyata (lihat perenggan 39–40).

(6) Pelaksanaan kuasa sedia ada mahkamah tidak boleh dihadkan hanya kepada situasi di mana terdapat lacuna di dalam KKM. Fakta bahawa A 6 k 7(2) KKM secara jelas mengehadkan kepada tempoh writ admiralti in rem boleh diperbaharui sebanyak lima kali tidak dapat menghalang mahkamah dari menjalankan kuasa sedia ada untuk melanjutkan tempoh writ melebihi lima kali untuk mengelakkan ketidakadilan kepada litigan (lihat perenggan 42 & 49).

(7) Dengan berpegang bahawa tafsiran nyata A 6 k 7(2) KKM untuk menghalang tempoh writ in rem dilanjutkan untuk kali keenam, mahkamah di bawah tidak mengambil kira kesukaran praktikal yang dihadapi oleh plaintif dalam menyerahkan writ tersebut di mana kapal defendan tidak pernah masuk ke dalam kawasan bidang kuasa. Ianya juga berpotensi memberi peluang kepada pemilik kapal untuk mengelak liabiliti dengan memastikan kapal mereka di luar bidang kuasa sehingga tempoh had tuntutan tamat. Budi bicara adalah terletak kepada mahkamah untuk memutuskan sama ada writ itu perlu diperbaharui melebihi bilangan yang dinyatakan di dalam A 6 k 7(2) demi kepentingan keadilan. Jawatankuasa Peraturan seharusnya mempertimbangkan untuk meminda A 6 k 7(2) untuk menghapuskan had lima kali tempoh lanjutan kerana ianya bukan sahaja akan mengelakkan ketidakadilan, seperti yang berlaku dalam rayuan ini, malah ianya selaras dengan undang-undang bidang kuasa maritim di negara lain (lihat perenggan 49–51).]

Cases referred to

Aichhorn & Co KG v The Ship MV Talabot (1974) 132 CLR 449, HC (refd)
Al Dhabiyyah, The [1999] 4 HKC 414 (refd)
Arab-Malaysian Credit Bhd v Tan Seang Meng [1995] 1 MLJ 525; [1995] 1 CLJ 773, CA (refd)
Aro Co Ltd, In Re [1980] Ch 196, CA (refd)
Berny, The [1979] QB 80, QBD (refd)
Chong Beng, The [1997] 3 HKC 579, HC (refd)

A *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj Tunku Mahkota Johor v Datuk Captain Hamzah bin Mohd Noor and another appeal* [2009] 4 MLJ 149; [2009] 4 CLJ 329, FC (refd)
Ho Yoke Kwei & Anor v Ong Eng Hin [1997] 4 MLJ 292; [1997] 1 CLJ 603, HC (refd)
B *Lircay, The* [1997] 2 SLR 669; [1997] 1 SLR(R) 69, HC (refd)
Minmetals South-East Asia Corp Pte Ltd v Nakhoda Logistics Sdn Bhd [2018] 6 MLJ 152; [2019] 3 CLJ 198, CA (refd)
Monica S, The [1968] 2 WLR 431 (refd)
C *Pan United Shipyard Pty Ltd v The Ship 'Rodolfo Mata'* [2004] FCA 117, FC (refd)
Permodalan MBf Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors [1988] 1 MLJ 178; [1988] 1 CLJ 31, SC (refd)
Societe Generale v The Owners and/or Demise Charterers of and/or Other Persons Interested In The Ship Or Vessel 'Maple' [2018] MLJU 889; [2018] 1 LNS
D 927, HC (refd)
'The Hull 308'; Deutz Mwm Far East (Pte) Ltd v Owners of and other persons interested in the ship or vessel 'Hull No 308' (Standard Chartered Bank, interveners) [1991] 3 MLJ 393; [1991] 3 CLJ 2984, CA (refd)
E *Yomeishu Seizo Co Ltd & Ors v Sinma Medical Products (M) Sdn Bhd* [1996] 2 MLJ 334; [1996] 2 BLJ 142, HC (refd)

Legislation referred to

Admiralty Rules 1988 [AU] r 20
F Civil Procedure Rules 1998 [UK] r 61.3(5)
Rules of Court 2012 O 6 rr 3, 7, 7(1), 7(2), 7(2A), O 11, O 62 r 5, O 70, O 70 rr 1(1), 3(3), 7(1), 10, O 92 r 4
Rules of the High Court [HK] O 6 r 8(2)
Rules of the High Court 1980 (repealed by Rules of Court 2012) O 6 r 7(2), (2A), O 92 r 4
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Appeal from: *Fimbank Plc v Owners and/or Demise Charterers of the Ship or Vessel 'Nika' now known as 'Bao Lai'* [2023] 5 MLJ 192 (Court of Appeal, Putrajaya)

H *Arun Krishnalingam (with Aaron Siva and Loh Yan Shuang) (Christopher & Lee Ong) for the appellant.*

Nallini Pathmanathan FCJ:

I INTRODUCTION

[1] The issue before the Federal Court concerns the number of times an admiralty writ in rem may be renewed. In this jurisdiction, the renewal of a writ is governed by O 6 r 7 of the Rules of Court 2012 ('the Rules'). More

particularly, O 6 r 7(2) of the Rules expressly provides that the validity of a writ in an admiralty action may be extended five times where efforts to serve the writ on a defendant have been unsuccessful.

[2] The instant appeal turns on whether the court may exercise its inherent powers to renew a writ in rem beyond the fifth time to prevent injustice to a plaintiff where the service of the writ is an impossibility. Both the courts below were of the view that they could not override the express terms of O 6 r 7(2) of the Rules to renew a writ in rem for the sixth time even in a situation where the writ could not be served through no fault of the plaintiff.

[3] We reversed the decisions of the courts below and now provide our reasons for doing so.

BACKGROUND FACTS

[4] The appellant, FIMBank PLC ('FIMBank') is a Maltese bank and a trade financier. FIMBank had financed the purchase of a cargo of approximately 17,300 MT of Ukrainian Milling Wheat ('the cargo') by its borrower-customers. In exchange, FIMBank obtained the original bills of lading to the cargo as security for the financing extended. The cargo was shipped on board the vessel 'NIKA' ('the vessel') for carriage from Chornomorsk, Ukraine to an Egyptian Mediterranean Port. At the material time, the vessel was owned by the respondent ('the vessel owners').

[5] On 17 May 2019, FIMBank filed an admiralty writ in rem in the High Court at Kuala Lumpur ('the writ') against the vessel owners on the grounds that the vessel owners misdelivered the cargo to unauthorised third parties without presentation of the original bills of lading, thereby causing loss to FIMBank. It is noted that this cause of action is well-established in this jurisdiction (see: *Minmetals South-East Asia Corp Pte Ltd v Nakhoda Logistics Sdn Bhd* [2018] 6 MLJ 152; [2019] 3 CLJ 198).

[6] The following principles govern the service of the writ:

(a) the writ is to be served on the vessel itself as stipulated under O 70 r 7(1) of the Rules:

> ... a writ by which an action in rem is begun shall be served on the property against which the action is brought ...

(b) the manner in which the service of the writ is to be physically effected against the vessel is prescribed by O 70 r 10 of the Rules. Substituted service of the writ is not permitted;

(c) the writ also cannot be served out of the jurisdiction. This is stated under

O 70 r 3(3) of the Rules:

> Service out of jurisdiction of notice of writ (O 70 r 3)
>
> (1) Subject to the following provisions of this rule, service out of the jurisdiction of a notice of a writ, containing any [admiralty] claim ... is permissible with the leave of the Court ...
>
> ...
>
> (3) *Paragraph (1) shall not apply to an action in rem*. (Emphasis added.)

(d) it follows that the writ can only be served on the vessel if the vessel comes into Malaysian waters. The rationale for this rule was explained by the High Court of Australia in *Aichhorn & Co KG v The Ship MV Talabot* (1974) 132 CLR 449:

> Since the jurisdiction of the court to entertain an action in rem is based on the presence of the res within the territory of the state under whose authority the court sits, and since the purpose of such an action is to enable the judgment to be satisfied out of the res, it must follow ... that a writ in an action in rem can only be served if the res is within the jurisdiction.

(e) the writ is valid in the first instance for six months from the date of its issue as provided under O 6 r 7(1) of the Rules:

> For the purpose of service, a writ ... is valid in the first instance for six months beginning from the date of its issue ...

[7] The cumulative effect of the above provisions is that the writ, which was filed by FIMBank on 17 May 2019, was required to be physically served on the vessel within Malaysian waters on or before 16 November 2019. However, FIMBank was unable to do so as the vessel had not entered Malaysian waters since the writ was issued.

[8] Therefore, FIMBank applied to the court to extend the validity of the writ pursuant to the following provisions:

(a) O 6 r 7(2) of the Rules states that where a plaintiff has been unsuccessful in its efforts to serve an admiralty writ, the court may extend the validity of the admiralty writ five times for a period not exceeding six months at any one time:

> Subject to paragraph (2A), *where efforts to serve a writ on a defendant have been unsuccessful, the Court may by order extend the validity of the writ* twice (in Sabah and Sarawak thrice and *in admiralty actions five times), not exceeding six months at any one time*, beginning with the day next following that on which it would otherwise expire, as may be specified in the order. (Emphasis added.)

(b) O 6 r 7(2A) of the Rules sets out the procedure to be followed when making an application to renew the writ:

> An application for a renewal of writ must be made before the expiry of the writ, ex parte by notice of application supported by affidavit showing that efforts have been made to serve the defendant within one month from the date of the issue of the writ and that efforts have been made subsequent thereto to effect service.

[9] Between 15 November 2019 and 10 November 2021, FIMBank made a total of five applications to renew the writ on the grounds that the vessel had not been in Malaysian waters for service of the writ to be effected. The High Court allowed all five applications and accordingly extended the validity of the writ five times consecutively for a period of six months each time. The fifth extension granted by the High Court had extended the validity of the writ until 16 May 2022.

THE HIGH COURT

[10] On 13 April 2022, FIMBank filed an application to extend the validity of the writ for the sixth time premised on the reason that the writ remained unserved due to the vessel not having entered Malaysian waters since the issuance of the writ. This assertion was made based on FIMBank's consistent monitoring of the movements of the vessel through the use of services provided by Lloyd's List Intelligence and Marine Traffic. FIMBank accordingly argued that it had not had any reasonable opportunity to effect service of the writ and that its inability to serve the writ was not due to any default or lack of effort on its part.

[11] FIMBank further highlighted that the ownership of the vessel had changed three times since the cause of action arose. At that time, the vessel was owned by Discover Investment Corp ('Discover'). However, following the issuance of the writ, the ownership of the vessel had been transferred three times: first, from Discover to Anchor Nautical SA ('Anchor'); second, from Anchor to Bluefish Marine Corp ('Bluefish'); and third, from Bluefish to Bao Yi Shipping Co Ltd ('Bao Yi'), who is the current owner of the vessel.

[12] As a result of these changes in ownership of the vessel, FIMBank argued that it could not now issue a fresh writ in rem for the same claim. This was because FIMBank's claim in rem falls under a category of maritime claims known as a statutory right of action in rem or 'statutory lien'. Such a claim requires FIMBank to establish liability in personam on the part of the owner of the defendant vessel at the time the writ in rem is issued. However, the present owner of the vessel, Bao Yi, is not the party liable for FIMBank 's claim in personam. In other words, the change in ownership of the vessel had the effect of defeating any fresh claim in rem brought by FIMBank against the vessel owners. In any event, the limitation period for FIMBank's claim had expired.

[13] FIMBank thus argued that its substantive rights against the vessel owners were now vested in and contingent on the writ as issued on 17 May 2019 and that if the writ was not renewed, it would be deprived of its substantive rights through no fault of its own, amounting to manifest injustice.

[14] Premised on the above, FIMBank urged the High Court to use its inherent powers under O 92 r 4 of the Rules to renew the writ beyond the fifth time. O 92 r 4 of the Rules reads as follows:

> For the removal of doubt it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court.

[15] FIMBank's arguments did not find favour with the High Court. On 12 May 2022, the High Court dismissed FIMBank's application to extend the validity of the writ for the sixth time holding, amongst others, as follows:

(a) the inherent powers of the court should only be exercised where there is a lacuna in the Rules. There is no lacuna in this case as O 6 r 7(2) of the Rules prescribes the maximum number of times an admiralty writ in rem can be renewed;

(b) the court cannot usurp the powers and functions of the Rules Committee, which had recognised the need to fix a limit on the number of times a writ in an admiralty action could be renewed; and

(c) if the court were to allow the writ to be renewed for the sixth time, there would be uncertainty in the event that the writ is still not served within the next six months for the same reasons.

THE COURT OF APPEAL

[16] Dissatisfied with the decision of the High Court, FIMBank appealed to the Court of Appeal. On 15 November 2022, the Court of Appeal dismissed the appeal and affirmed the findings of the High Court on the following grounds:

(a) the court is not permitted to override the five-time limit prescribed by O 6 r 7(2) of the Rules for the renewal of a writ in an admiralty action;

(b) since there is no lacuna in the Rules in relation to the number of times an admiralty writ can be renewed, the court cannot invoke its inherent powers pursuant to O 92 r 4 of the Rules; and

(c) if the court were to continue granting extensions of the writ until the vessel comes into Malaysian waters, the purpose of O 6 r 7(2) of the Rules would be defeated.

THE FEDERAL COURT

[17] On 31 March 2023, FIMBank was granted leave to appeal to the Federal Court on the following questions of law:

(a) whether O 6 r 7(2) of the Rules places an absolute cap and/or limit upon the number of times an admiralty writ in rem may be extended and/or renewed;

(b) whether O 6 r 7(2) of the Rules applies in circumstances where personal service of an admiralty writ in rem is an impossibility;

(c) whether O 6 r 7(2) of the Rules is intended to abrogate or defeat a claimant's accrued statutory rights to prosecute its claim in rem and to security for its claim; and

(d) whether the language of O 6 r 7(2) of the Rules precludes the court from exercising its inherent jurisdiction to extend the validity of an admiralty writ in rem when the court is of the view that the justice of the case requires it.

THE PURPOSE AND OBJECT OF O 6 R 7(2) OF THE RULES

[18] The primary issue that arises for consideration in this appeal is the construction of O 6 r 7(2) of the Rules. In this context, it is necessary to examine the purpose and object of O 6 r 7(2) of the Rules.

[19] In the Federal Court case of *Duli Yang Amat Mulia Tunku Ibrahim Ismail Ibni Sultan Iskandar Al-Haj Tunku Mahkota Johor v Datuk Captain Hamzah bin Mohd Noor and another appeal* [2009] 4 MLJ 149; [2009] 4 CLJ 329, Zaki Azmi CJ made the following observations on the purpose and object of O 6 r 7(2A) of the Rules of the High Court 1980, which is in pari materia with O 6 r 7(2A) of the Rules:

> [39] I strongly believe that *O 6 r 7(2A) of the RHC was introduced to prevent abuse by the plaintiffs in filing writs and sleeping on them without making efforts to serve them. This practice of inactivity is something which courts loathe. It is against the administration of justice. It creates a backlog and results in a false number of pending cases. In my opinion, courts should take serious a (sic) view of such cases. If not, they will continue to remain in the list of outstanding cases. As such, O 6 r 7(2A) of the RHC must be strictly enforced as required by the rule.*
>
> [40] When the plaintiffs apply to extend the validity of writs, courts should examine closely the affidavits filed in support of applications for extensions. Before granting an extension, courts must be satisfied that serious efforts had been made to serve. A simple and plain statement that efforts had been made to serve cannot be a sufficient ground. The affidavits must provide detailed facts as to when, where and how attempts to serve were made. Otherwise O 6 r 7(2A) of the RHC will become a dead letter. The object of the rule will be defeated. (Emphasis added.)

[20] It is therefore clear that the purpose and object of O 6 r 7(2) of the Rules is to stop a plaintiff from sleeping on a writ without making any efforts to serve the same. It is in such a circumstance that the cap on the number of renewals of an admiralty writ under O 6 r 7(2) of the Rules is intended to operate.

[21] O 70 of the Rules is the primary provision under the Rules that governs admiralty causes and matters. Order 70 r 1(1) of the Rules reads as follows:

> Application and interpretation (O 70 r 1)
>
> (1) This Order applies to Admiralty causes and matters, and *the other provisions of these Rules apply to those causes and matters subject to the provisions of this Order*. (Emphasis added.)

[22] In other words, in the event that there is a conflict between O 70 of the Rules and other provisions of the Rules in respect of an admiralty cause or matter, O 70 of the Rules would prevail.

[23] As stated earlier, O 70 of the Rules envisages that an admiralty writ in rem can only be served on the defendant vessel when it is within Malaysian territorial waters. If the vessel does not enter the jurisdiction, the service of the writ simply cannot be effected. In such a circumstance, O 6 r 7(2) of the Rules cannot be logically read to impose a five-time renewal limit for the writ.

[24] Crucially, O 6 r 7(2) of the Rules contains a proviso that 'efforts to serve a writ on a defendant have been unsuccessful'. Order 6 r 7(2A) of the Rules further mandates that 'efforts have been made to serve the defendant within one month from the date of the issue of the writ and that efforts have been made subsequent thereto to effect service'. However, if the defendant vessel never enters Malaysian waters, there is no opportunity for the plaintiff to make 'efforts' to serve its writ in rem.

[25] The rationale of O 6 r 7(2) of the Rules in the context of admiralty claims is to guard against indolent litigants who fail to take serious steps to serve a writ in rem on a defendant vessel that is within the jurisdiction. Therefore, on a purposive reading of O 6 r 7(2) of the Rules, the court may refuse to extend the validity of a writ in rem where no serious attempt was made by the plaintiff to serve the writ after the defendant vessel comes into Malaysian territorial waters. This same reasoning was adopted in *Societe Generale v The Owners and/or Demise Charterers of and/or Other Persons Interested In The Ship Or Vessel 'Maple'* [2018] MLJU 889; [2018] 1 LNS 927, where the failure of a plaintiff to effect service of an admiralty writ in rem on a vessel when it did in fact enter Malaysian waters was found by the High Court to militate against the exercise of the court 's discretion under O 6 r 7(2) of the Rules to extend the validity of the writ.

[26] An admiralty writ in rem ought to be contrasted from an ordinary civil writ. The two-time limit placed by O 6 r 7(2) of the Rules on the renewal of an ordinary writ is complemented by other provisions of the Rules that cater for situations where a plaintiff encounters difficulties in effecting service of the writ. Where a defendant is evading service or cannot be traced, O 62 r 5 of the Rules allows the writ to be served by way of substituted service. If the defendant is not within the jurisdiction, O 11 of the Rules permits the plaintiff to apply for service of the writ out of the jurisdiction in order to bring the defendant within t he court's jurisdiction. These provisions, however, do not apply to an admiralty writ in rem, which is required under O 70 of the Rules to be served through that single means, that is, personally on the defendant vessel if and when it enters Malaysian waters.

[27] Ultimately, the purpose and object of O 6 r 7(2) of the Rules is to ensure the prompt service of a writ on a defendant. Order 6 r 7(2) of the Rules does not cater for, and is therefore inapplicable to, situations where it is impossible for a plaintiff to effect personal service of an admiralty writ in rem. Where the defendant vessel never comes into the jurisdiction, the five-time limit on the number of renewals of an admiralty writ simply does not apply. This is the proper interpretation to be accorded to O 6 r 7(2). of the Rules

THE POSITION IN OTHER JURISDICTIONS

[28] The above reading of O 6 r 7(2) of the Rules is in line with the laws of other leading maritime jurisdictions, such as Singapore, England, Hong Kong and Australia, where there is no cap or limit on the number of times the validity of an admiralty writ in rem can be extended.

[29] In Singapore, although O 6 r 3 of the recently amended Rules of Court 2021 has introduced a limit on the number of times an ordinary writ can be renewed, the said limit is expressly precluded from applying to admiralty writs. The relevant provision is reproduced below:

> Duration and renewal of originating claim or originating application (O 6, r 3)
>
> (1) Subject to this Rule, an originating claim or an originating application is valid for service for 3 months beginning with the date of its issue.
>
> ...
>
> (4) Except in a special case, the Court may extend the validity of the originating claim or originating application only twice and by not more than 3 months each t ime.
>
> ...
>
> (6) *Paragraphs (1) and (4) do not apply to an originating claim relating to Admiralty causes and matters*. (Emphasis added.)

[30] Admiralty writs are thus treated differently from ordinary civil writs, as they ought to be, because the service of an admiralty writ is dependent on when and whether the defendant vessel is within the jurisdiction.

[31] Similarly, the procedural rules in England, Australia and Hong Kong do not impose any limit or cap on the number of times an admiralty writ can be renewed (see: r 61.3(5) of the Civil Procedure Rules 1998 (UK); r 20 of the Admiralty Rules 1988 (AU); O 6 r 8(2) of the Rules of the High Court (HK)).

[32] Furthermore, the courts across these jurisdictions recognise that the absence of the defendant vessel from the jurisdiction amounts to a good reason to allow the renewal of an admiralty writ in rem (see: *The Lircay* [1997] 2 SLR 669; [1997] 1 SLR(R) 699; *The Berny* [1979] QB 80; *The Chong Beng* [1997] 3 HKC 579)). The practice of the courts in these jurisdictions is to regularly renew writs in rem until the defendant vessel calls into a port within the jurisdiction, thereby affording the plaintiff a reasonable opportunity to serve the writ.

[33] In *Pan United Shipyard Pty Ltd v The Ship 'Rodolfo Mata'* [2004] FCA 117, the Federal Court of Australia emphasised that the court has a discretion to repeatedly renew a writ in rem where the defendant vessel has not entered the jurisdiction for service to be effected:

> [10] ... the court has power to extend the time within which a writ in rem may be served by granting leave to serve the writ beyond a period of twelve months. Such leave may be in respect of a specific occasion or may be granted in general terms. I t would seem to follow that *the power to grant leave would not be exhausted upon the use of the power and further leave may be granted if circumstances warrant the exercise of that discretion*.
>
> ...
>
> [12] *If the plaintiff shows that it has taken reasonable steps to be informed of the whereabouts of the ship the subject of the writ, and it appears that the ship has not entered Australia*, or has not been present in Australia for a sufficient period to provide the plaintiff with a reasonable opportunity to effect service on the vessel, *then leave to serve beyond the effective term of the writ may be granted*. (Emphasis added.)

[34] The Court of First Instance in Hong Kong made similar observations in *The Al Dhabiyyah* [1999] 4 HKC 414:

> The essence and purpose of admiralty jurisdiction in rem is the obtaining of security by the plaintiff ... It is the statutory right of the plaintiff in action in rem to obtain security and he has the option ... to choose the security he wishes to obtain and the timing of obtaining of such security, so long as it is within the period of the validity of the writ or its extended valid period if the writ is allowed to be renewed. *If no vessel comes in at all, he will normally also be granted a renewal of the writ to enable him to obtain security during the extended period of the writ. It is not unknown for a writ to be*

renewed many times due to the inability of the plaintiff to obtain security and therefore serve the writ in rem. (Emphasis added.)

[35] A harmonious reading of O 6 r 7(2) and O 70 of the Rules gives rise to an approach that is consistent with the position of law in other like jurisdictions. Since an admiralty writ in rem can only be served on the defendant vessel within the territorial jurisdiction of the court, it necessarily follows that the court ought to allow the writ to be renewed for as long as the defendant vessel does not enter the jurisdiction.

FIMBANK'S STATUTORY RIGHT OF ACTION IN REM

[36] As mentioned earlier, FIMBank has, through the commencement of its claim in rem, acquired a statutory right of action in rem to proceed against the vessel. A statutory right of action in rem crystallises upon the issuance of a writ, conferring upon the plaintiff the status of a secured creditor (see: *In Re Aro Co Ltd* [1980] Ch 196; *'The Hull 308'; Deutz Mwm Far East (Pte) Ltd v Owners of and other persons interested in the ship or vessel 'Hull No 308' (Standard Chartered Bank, interveners)* [1991] 3 MLJ 393; [1991] 3 CLJ 2984). This right cannot be defeated by a subsequent change in ownership of the res, even if the writ has not been served (see: *The Monica S* [1968] 2 WLR 431).

[37] In the present appeal, although the ownership of the vessel has changed three times since the issuance of the writ, FIMBank's statutory right of action in rem persists. Order 6 r 7(2) of the Rules cannot be utilised to defeat this right. Nor can it be used to deny a claim that has been brought within time where there is no factual or legal basis to do so as is the case here. Order 6 r 7(2) of the Rules, being subsidiary legislation, cannot eradicate or annihilate a statutory right of action in rem that has accrued within the limitation period.

[38] A plain or grammatical reading of O 6 r 7(2) of the Rules, where the words in O 6 r 7(2) of the Rules are taken in vacuo without consideration of the rest of the provisions in the Rules, would result in a construction that there is an absolute limit of five renewals of the writ that can be sought by FIMBank. However, such an interpretation would defeat FIMBank's statutory right of action in rem and effectively override its status as a secured creditor, resulting in manifest injustice to FIMBank. This could not have been the intention behind O 6 r 7(2) of the Rules.

[39] FIMBank has not slept on the writ, nor has it forsaken any steps to effect service of the same. In fact, it has diligently monitored the movements of the vessel throughout the period of validity of the writ. FIMBank cannot be faulted for the non-arrival of the vessel into Malaysian waters, rendering service of the

writ an impossibility. The changes in ownership of the vessel after the writ's issuance are similarly beyond FIMBank's control.

[40] The purpose of the Rules is to facilitate the administration of justice; not to incapacitate it. To read O 6 r 7(2) of the Rules in a manner which places an absolute cap or limit on the number of times a writ in rem may be renewed, as the courts below have done, diverges from the purpose of the Rules and punishes a diligent litigant. Manifest injustice would result to FIMBank in the event that its statutory right to prosecute its claim in rem and to obtain security for its claim are defeated by reason of a pedantic reading of O 6 r 7(2) of the Rules. This is a situation that warrants the invocation of the court's inherent powers to prevent injustice.

THE INHERENT POWERS OF THE COURT

[41] The courts below held that the inherent powers of the court pursuant to O 92 r 4 of the Rules should only be invoked where there is a lacuna in the Rules. In arriving at this conclusion, the High Court below relied on *Yomeishu Seizo Co Ltd & Ors v Sinma Medical Products (M) Sdn Bhd* [1996] 2 MLJ 334; [1996] 2 BLJ 142 ('Yomeishu Seizo'), which posited as follows:

> ... where there is a lacuna in the rules and practice, then and only then, may the aforesaid inherent jurisdiction be invoked.

[42] The foregoing proposition, however, cannot be read so as to confine the exercise of the court's inherent powers only to situations where there is a lacuna in the Rules. The absence of a lacuna in the Rules cannot of itself fetter the exercise of the court's inherent powers. In *Ho Yoke Kwei & Anor v Ong Eng Hin* [1997] 4 MLJ 292; [1997] 1 CLJ 603, Augustine Paul JC (as he then was) observed that:

> ... the inherent power of the court is not confined to merely filling in gaps in the rules but extends to mould remedies where no provision is made for them in the rules.

[43] In a similar vein, the then Supreme Court in *Permodalan MBf Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors* [1988] 1 MLJ 178; [1988] 1 CLJ 31 held as follows:

> We read [O 92 r 4 of the Rules of the High Court 1980] to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to prevent any injustice or any abuse of its own process. It follows that *where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers*. (Emphasis added.)

[44] The court will therefore decline to resort to its inherent powers where there are other remedies provided for in the Rules. To this end, the reasoning of the courts below that there was no lacuna in the Rules was, with respect, flawed and incorrect because the lack of a lacuna nec essarily indicates the availability of alternative remedies to an aggrieved litigant. No such alternative remedy was available to FIMBank in this case.

[45] The case of *Arab-Malaysian Credit Bhd v Tan Seang Meng* [1995] 1 MLJ 525; [1995] 1 CLJ 773 ('Arab-Malaysian Credit') was an instance where the Court of Appeal exercised its inherent powers to extend the validity of writs beyond what was expressly stipulated in the Rules. In this case, the plaintiff had served the writ on the defendant by way of substituted service. Subsequently, a default judgment was entered against the defendant. However, the defendant managed to set aside the judgment on the basis that the order for substituted service was fatally flawed. The plaintiff was consequently required to re-serve the writ on the defendant. This placed the plaintiff in a conundrum as, by the time the default judgment was set aside, the writ had long expired and could no longer be validly served. At that time, O 6 r 7(2) of the Rules of the High Court 1980 provided as follows:

> Where a writ has not been served on a defendant, the Court may by order extend the validity of the writ from t ime to time for such period, *not exceeding 12 months at any one time*, beginning with the day next following that on which it would otherwise expire, as may be specified in the order, if an application for extension is made to the Court before that day or such later day (if any) as the Court may allow. (Emphasis added.)

[46] Under O 6 r 7(2) of the Rules of the High Court 1980, the plaintiff could not obtain more than one order at a time for the renewal of a writ for a 12-month period. In order to overcome this conundrum, the plaintiff simultaneously applied for and obtained eight separate 12-month extensions of the validity period of the writ. The defendant was successful in its application before the High Court to set aside the eight extensions. The plaintiff appealed.

[47] In allowing the appeal, the Court of Appeal held that, notwithstanding O 6 r 7(2) of the Rules of the High Court 1980, the court 'had ample jurisdiction' to grant the eight extensions sought by the plaintiff. The Court of Appeal reasoned that it could overcome the restriction of granting more than one extension of 12 months at any given time as expressed in O 6 r 7(2) of the Rules of the High Court 1980 by having resort to O 92 r 4 of the Rules of the High Court 1980, which reserved the inherent powers of the court to make any order as may be necessary to prevent injustice.

[48] The High Court below declined to follow *Arab-Malaysian Credit* on the grounds that the decision was premised on the old O 6 r 7(2) of the Rules of the

A High Court 1980, which did not contain a cap on the number of times a writ could be renewed. In taking that approach, the High Court , with respect, did not appreciate the essence of the decision in *Arab-Malaysian Credit* which recognised that the recourse to the inherent powers of the court under O 92 r 4 of the Rule is a matter of judicial discretion.

B

[49] We note that the Rules Committee in 2000 introduced an amendment to O 6 r 7(2) of the Rules of the High Court 1980 by limiting the number of times a writ can be renewed to twice for ordinary writs in Peninsular Malaysia, thrice for ordinary writs in Sabah and Sarawak and five times for admiralty writs. This provision is in *pari materia* with O 6 r 7(2) of the Rules. Nonetheless, in our view, the 2000 amendment does not preclude the court from exercising its inherent powers to extend the validity of an admiralty writ in rem beyond the fifth time to prevent injustice to a litigant. The courts below, with respect, erred in holding that they did not have the power to renew a writ in rem for the sixth time, notwithstanding the injustice that will result to FIMBank, by sole reason of the express wording of O 6 r 7(2) of the Rules.

C

D

[50] The construction accorded to O 6 r 7(2) of the Rules by the courts below ignores the practical difficulties faced by plaintiffs in effecting service of a writ in rem where the defendant vessel never comes into the jurisdiction. It also potentially incentivises owners of a vessel to evade liability by keeping their vessel out of the jurisdiction until the limitation period for the claim expires. Therefore, O 6 r 7(2) of the Rules cannot be construed so as to impose an absolute cap or limit on the number of times an admiralty writ in rem can be renewed. The ultimate discretion to decide whether to allow the renewal of a writ in rem in the interests of justice rests with the court.

E

F

[51] In our respectful view, the Rules Committee ought to consider amending O 6 r 7(2) of the Rules to remove the five-time limit on the number of renewals of an admiralty writ. Such an amendment would inevitably prevent unjust situations such as the one that arose in the instant appeal and also be in keeping with the laws of other major maritime jurisdictions.

G

H

ADDITIONAL ORDERS SOUGHT BY FIMBANK

[52] In addition to the four questions of law posed for our determination as set out in para 17 of this judgment, FIMBank also sought the following orders from this court in the course of the hearing of the instant appeal:

I

(a) that the identities of the parties and the vessel, including the name and International Maritime Organisation ('IMO') number of the vessel, be anonymised in any judgment to be issued by this court; and

(b) that the key facts of the instant appeal, such as port names, cargo type and quantity, bill of lading numbers and dates, be anonymised or stated generically to the extent possible.

[53] In seeking the above orders, learned counsel for FIMBank submitted on the following grounds:

(a) the conduct of the vessel owners strongly indicates that they will deliberately keep the vessel out of Malaysian waters should they come to learn that there is an extant writ against the vessel. Following the issuance of the writ, the vessel owners sold the vessel under highly suspicious circumstances with the likely intent of evading liability;

(b) the fact that the judgments of both the courts below were published without any redactions does not render the redactions sought by FIMBank in the instant appeal futile or otiose. There is a possibility that the vessel owners are unaware of the existence of these judgments. Even if they are aware of the same, their knowledge would be limited to the fact that the courts below declined to renew the writ;

(c) a judgment of the Federal Court will inevitably attract a wide readership, making it all the more necessary that the redactions sought are granted; and

(d) the claim underlying the instant appeal is the subject matter of an arbitration seated in London, England. The claim herein was commenced by FIMBank for the purpose of obtaining security for any award made in the arbitral proceedings. As such, the redactions sought are necessary to protect arbitral confidentiality.

[54] Having considered the above submissions, we are of the view that there are no compelling circumstances to grant the orders sought by FIMBank. The al legations raised against the vessel owners in the instant appeal are true of every vessel owner. The facts of this appeal are not extraordinary and do not warrant the granting of the redactions sought. Moreover, the instant appeal is distinct and separate from any arbitral proceedings between the parties and therefore has no bearing on arbitral confidentiality. In the circumstances, we do not think it is necessary to grant the orders sought by FIMBank.

THE QUESTIONS OF LAW

[55] For the reasons we have enunciated at length above, we answer the questions of law as follows:

(a) question 1:
whether O 6 r 7(2) of the Rules places an absolute cap and/or limit upon the number of times an admiralty writ in rem may be extended

A and/or renewed.
Answer:
No, O 6 r 7(2) of the Rules does not;

(b) question 2:
B whether O 6 r 7(2) of the Rules applies in circumstances where personal service of an admiralty writ in rem is an impossibility.
Answer:
No, O 6 r 7(2) of the Rules does not apply in such circumstances.

(c) question 3:
C whether O 6 r 7(2) of the Rules is intended to abrogate or defeat a claimant's accrued statutory rights to prosecute its claim in rem and to security for its claim.
Answer:
No, that is not the intention of O 6 r 7(2) of the Rules; and

D (d) question 4:
whether the language of O 6 r 7(2) of the Rules precludes the court from exercising its inherent jurisdiction to extend the validity of an admiralty writ in rem when the court is of the view that the justice of
E the case requires it.
Answer:
No, the language of O 6 r 7(2) of the Rules does not preclude the inherent jurisdiction (or more accurately, the inherent powers) of the court to extend the validity of an admiralty writ in rem in order to
F prevent injustice.

[56] Following from the above, we unanimously allowed FIMBank's appeal with costs in the cause.

G *Leave questions answered in the negative and appeal allowed.*

Reported by Ashok Kumar

H

I